SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 276

THE SECURITY FLOUR MILLS COMPANY,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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Of Counsel.

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COMMISSIONER OF INTERNAL REVENUE.

PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

Your petitioner, The Security Flour Mills Company, prays that a writ of certiorari issue to review the judgment entered March 6, 1943, and the judgment entered May 22, 1943, denying petition for rehearing of said original March 6, 1943, judgment, both said judgments being entered in the United States Circuit Court of Appeals for the Tenth Circuit in the above entitled cause.

A.

Questions Presented.

During the calendar year 1935, petitioner, a wheat flour processor then subject to the Agricultural Adjustment Act, sold flour at a price which included cost, normal profit, and

an amount sufficient to cover the processing tax. In 1936 the A. A. A. was adjudged unconstitutional. In 1936, 1937, and 1938, petitioner paid $45,865.90 to vendees who had purchased flour in 1935, to reimburse them for the processing taxes included in 1935 flour sales prices, which taxes petitioner had not paid over to the fiscus. *Issue:* Whether Section 43 of the 1934 Revenue Act permits the deduction of said $45,865.90 from 1935 gross income in order clearly to reflect petitioner's income for that year.

Three other issues not now material, but which petitioner intends to urge in event its petition is granted, are: (1) Whether the increment to 1935 flour sales prices represented by the charge for processing taxes then due, which increment was impounded by court order during pendency of injunction proceedings instituted to test the A. A. A.'s constitutionality, was set apart in a special suspense account upon adjudication of the tax's unconstitutionality, and was never accepted or treated by petitioner as income until 1937 when controversies concerning such fund, with vendees and with the fiscus under Titles III and VII of the 1936 Revenue Act, were resolved, is, save for that portion thereof ultimately retained by petitioner, includable in petitioner's 1935 gross income; (2) Whether the normal method of computing income as of annual accounting periods should not be departed from where the increment to petitioner's income from 1935 flour sales, by reason of the inclusion of processing taxes in sales prices, and the corresponding, subsequent vendee reimbursements, were both part of one enormous, extraordinary, sui generis, nonrecurring transaction; and (3) Whether a deduction for accrued tax liabilities, taken and allowed in 1935, may be disallowed subsequently when the taxing statute is declared unconstitutional and actual payment of such accrued tax liability is therefore never made by the taxpayer.

B.

Statute Involved.

Revenue Act of 1934, Section 43 (May 10, 1934, C. 277), 48 Stat. 694, 26 U. S. C. A. § 43:

> "Sec. 43. Period for Which Deductions and Credits Taken.
>
> The deductions and credits provided for in this title shall be taken for the taxable year in which 'paid or accrued' or 'paid or incurred,' dependent upon the method of accounting upon the basis of which the net income is computed, *unless in order to clearly reflect the income the deductions or credits should be taken as of a different period.* * * *" (Emphasis supplied.)

C.

Summary Statement.

Petitioner, a Kansas corporation (R. 34), is engaged in manufacturing and selling wheat flour (R. 34). As such it was subject to the Agricultural Adjustment Act (R. 35).

During the calendar year 1935, petitioner sold flour at prices which consisted of the usual items of cost, plus normal profit, and included in addition an amount sufficient to cover the processing tax (R. 36). Due to pendency of an injunction suit instituted to test the constitutionality of the Agricultural Adjustment Act, petitioner paid no processing taxes to the fiscus subsequent to May 1, 1935 (R. 35). Instead, the amount of processing taxes "due" was impounded in a court designated depository from May through November, and was accrued on petitioner's books during December (R. 35).

At close of petitioner's 1935 calendar year, accrued liability for processing taxes amounted to $105,054.70 (R. 35). This sum (approximately) was deducted from 1935 income in petitioner's tax return for that year (R. 39-40).

During 1936 the taxing act was adjudged unconstitutional (R. 35). As a consequence, petitioner refunded $2,475.03 to its vendees in 1936, $41,879.50 in 1937, and $1,511.37 in 1938 (R. 36, 38-39)—a total refund of $45,865.90 (R. 34, 36, 38-39). These refunds were made with respect to 1935 sales, in order to reimburse vendees for processing taxes which they had paid as part of the sales price for flour purchased in 1935, which taxes petitioner had not paid over to the fiscus (R. 33, syl. 1 of B. T. A. opinion; R. 34, 39, 40, 45).

The Commissioner disallowed the $105,054.70 deduction in petitioner's 1935 tax return for processing tax liability accrued as of December 13, 1935, but subsequently dissolved (R. 40). The Commissioner refused to allow a deduction in lieu thereof for the $45,879.50 customer reimbursements actually paid, and on June 21, 1937, assessed an income tax deficiency of $14,702.48 and an excess-profits tax liability of $3,088.80 (R. 20, 34).

Whereupon petitioner, on August 9, 1937 (R. 5), petitioned the Board of Tax Appeals for a redetermination of said deficiency (R. 7).

It should be noted that in an amended answer filed with the Board, the Commissioner asserted a claim for an increased deficiency based upon a tax refund which was alleged to have been granted petitioner (R. 28-31; R. 34). The issue with respect to this additional deficiency was separately passed on by the Board (R. 45-47).

On this one issue, the Board's decision upheld the Commissioner (R. 45-47). In instituting an appeal to the Tenth Circuit Court of Appeals, docketed as appeal number 2556 (R. 53), the Commissioner specifically omitted this issue (R. 53-56). Present petitioner then filed a separate appeal, docketed number 2589 (R. 56), therefrom. In its opinion of

March 6, 1943, the Circuit Court of Appeals reversed the Board of Tax Appeals on this issue (R. 69-70), separate judgment being rendered thereon (R. 75).

Petition for rehearing filed with the Circuit Court by present petitioner was confined to appeal number 2556 and the judgment therein rendered (R. 77, 78-83). No petition for rehearing was filed in appeal number 2589, no petition for writ of certiorari was perfected within three months from date of that judgment, and said judgment is now final. Therefore no consideration will be given in this petition to the issues determined in appeal number 2589.

D.

Rulings of the Courts Below.

Opinion of the Board of Tax Appeals was rendered November 12, 1941 (R. 33). Observing that the identical question was involved in *Cannon Valley Milling Co.*, 44 B. T. A. 763 (1941), and that no substantial factual differences existed between the two cases (R. 45, lines 1-2 and 23-25), the Board held that reimbursements paid by petitioner to vendees in 1936-1937-1938 related to 1935 sales (R. 45, lines 21-22), and, under Section 43 (R. 45, line 16), should be deducted from 1935 gross income (R. 45, lines 31-33). No extended discussion was made, the Cannon decision being incorporated by reference: "On the authority of the cited case and for the reasons stated therein, we hold * * *" (R. 45, lines 29-31). Under Rule 50, formal decision was entered on the opinion December 29, 1941 (R. 51).

The Circuit Court of Appeals for the Tenth Circuit reversed this decision (R. 70). Relying upon Congressional committee reports (R. 67-68), the Circuit Court held Section 43 applies only where income or expenditures in one year relate to business operations *extending over a number of years* (R. 68, lines 8-12). No attempt was made to deny

the contrary legal conclusion of the Cannon case as affirmed on appeal by the Eighth Circuit (129 F. (2d) 642, 1942), but assuming its correctness *arguendo* (R. 68, lines 39-41) the court distinguished it upon the factual ground that there tax returns for 1935, 1936, 1937, and 1938 were in evidence, whereas here only the 1935 and 1937 returns were introduced (R. 68-69). The opinion was filed March 6, 1943 (R. 64). Judgment was entered the same day (R. 75). Petition for rehearing was filed May 22, 1943 (R. 83), in lieu of erroneous petition theretofore filed (R. 84), and memorandum order of denial was rendered May 22, 1943 (R. 84).

E.

Reasons for Granting Writ.

In the instant case, the Tenth Circuit Court of Appeals has decided an important question of Federal law—construction of Section 43 of the 1934 Revenue Act—which has not been, but should be, settled by this Court. In doing so, it has rendered a decision in direct conflict with the decision of the Eighth Circuit Court of Appeals on the same matter in *Helvering* v. *Cannon Valley Milling Co.*, 129 F. (2d) 642 (C. C. A. 8, 1942) affirming 44 B. T. A. 703 (1941).

Section 43 of the Revenue Act of 1934 first appeared as Section 200 (d) of the 1924 Revenue Act; it has been reenacted as Section 43 of each subsequent Revenue Act. It modifies the former rule that deductions may be taken only for the taxable year in which paid, accrued, or incurred, and permits the taking of deductions as of a different period whenever this is necessary clearly to reflect income.

Although it, or its counterpart, has been in the statute-books since 1924, it has never been judicially construed by this Court. It has, in fact, been construed only twice by the Federal courts: once in the *Cannon* case, *supra*, and again in the instant opinion.

As interpreted in the case at bar, Section 43 becomes relatively insignificant. However, if permitted to operate according to its literal terms, as was adjudged in the *Cannon* case, the statute assumes widespread importance.

While the potential importance of Section 43 might be demonstrated by myriad illustrations, the situation confronting the entire milling industry in this country should suffice for proof. Because the record before the Board of Tax Appeals was not built with certiorari in view, we are precluded from citing actual figures herein. Nevertheless, this Court may judicially recognize that, almost without exception, every flour mill (or other processor of wheat products): (a) was subject to the A. A. A. during 1935; (b) sold its flour "tax on" during that year, thereby tremendously increasing its apparent gross income; (c) after adjudication of the A. A. A.'s unconstitutionality, repaid to its 1935 customers a substantial portion of this abnormal increment to sales income; and (d) is now faced with a large income tax deficiency assessment for 1935 unless, under Section 43, it charge such reimbursements against 1935 gross receipts. The problem, therefore, is as broad as United States wheat processors are many. The amount of money involved is indicated by the fact that a $17,791.28 (R. 34) deficiency has been assessed against this single, small Kansas milling company alone.

Equally obvious, it is submitted, is the conflict between the decisions of the only two Federal courts which have passed on the issue: the Eighth Circuit Court opinion in the *Cannon* case, and the Tenth Circuit Court opinion in the case at bar.

In the *Cannon* case, the Eighth Circuit Court was presented with the argument that Section 43 did not apply for two reasons: (1) because the essence of tax laws is ascertainment and payment of taxes upon a fixed, annual basis,

and (2) because committee reports show Congress intended that section to apply only to instances of a specified character, such as rent payable in one year for a lease extending over several years (129 F. (2d) at 644-645). These are the identical two arguments advanced by the Commissioner in the case at bar.

The Tenth Circuit Court sustained contention one, saying:

> "The production of revenue ascertainable and payable at fixed intervals is the essence of any feasible system of taxation * * *" (R. 66).

The Eighth Circuit Court, on the other hand, refused to be swayed by that argument (129 F. (2d) at 645):

> "* * * it is clear that this clause [the "unless" clause of Section 43] does interfere with the conception of an inescapable, 'straight jacket' annual basis wherein all deductions must appear as paid or finally accrued. *Obviously, the clause is intended to do just that for that is what it says.*" (Italics supplied)

As for the second contention, the Tenth Circuit Court in the instant case quoted the report of the House Ways and Means Committee regarding Section 200 (d) of the 1924 Act (R. 67, last par.), the report of the Senate Finance Committee (R. 68, line 1), and concluded (R. 68):

> "These reports make it clear that the legislative intent and purpose of the 'unless provision' was to authorize the exception to the general rule in cases in which the taxpayer pays in one year interest, or rental, or other items for a period of years, and to other instances of that character * * * These transactions [in the case at bar] were not of that kind * * * For these reasons the taxpayer does not bring itself within the 'unless' clause in the statute."

On the other hand, the Eighth Circuit Court, to whom the identical committee reports were cited, reached the opposite conclusion:

> "As to the argument that the legislative history, as shown by the Committee Reports (to the Act of 1924), requires confinement to payment of accumulated expenses covering items extending over a period of years, we find no sufficient basis. The Committee Report * * * is as follows * * * [quoting said report] The Report states the occasion of the provision in section 43 but the language of the section is more general than the reason stated in the Report. Had Congress intended to limit this section to instances where 'a taxpayer pays in one year interest or rental payments or other items for a period of years,' it would have been easy to say so (compare section 107, Revenue Act 1939). There is no suggestion of such a limitation in the section. We have no difficulty in saying that the section includes the situations stated in the Report. However, we cannot write into the section such a limitation on the ground that the expression in the Committee Report suggests such action (Helvering vs. City Bank Farmers Trust Co., Trustee, 296 U. S. 85, 89 * * *" (129 F. (2d) at 645).

Nor, we submit, is there any substantial factual distinction between the two cases. As was noted by the Board in the case at bar (R. 45, lines 23-25):

> "There is no substantial difference between the facts in the instant proceeding and those in the cited [Cannon] case."

The only distinction suggested by the majority opinion in the present case is that in the Cannon case, the tax returns for 1935, 1936, 1937, and 1938 were in evidence, whereas here only the 1935 and 1937 returns were introduced (R. 69, first par.).

This "distinction" lacks substance for at least four reasons:

(1) The Cannon decision is not predicated upon any of the factual matters disclosed by post-1935 tax returns. The entire rationale of the Eighth Circuit Court's opinion is contained in the first full paragraph entitled "Application" (129 F. (2d) at 646) wherein the facts relied upon are those common to all flour processors. No special fact, peculiar to the Cannon Valley Milling Company, is so much as mentioned.

(2) Perhaps more important, the Commissioner's argument and the Tenth Circuit Court's ruling flatly deny Section 43's application in favor of *any* mill in petitioner's general situation. The only purpose served by introduction of tax returns for the years 1935 through 1938 could be to demonstrate the *quantum* of difference between deducting vendee reimbursements from income of the year of sale (1935), and deducting them from income of the years of payment; that is, to show distortion of true income reflection save by relating payments back to 1935. Yet even were petitioner able to establish a $50,000,000,000.00 distortion of its true 1935 income if reimbursements are charged against income of the years of payment, nevertheless the *nature* of those reimbursements would not thereby become changed to "expenditures in one year which are attributable to or related to business operations *extending over a number of years*, * * * [such as], * * * interest, or rental, or other items of that kind *covering a period of years*" (R. 68). Therefore the Tenth Circuit Court's opinion would deny petitioner the right to avail itself of Section 43. By the same token no wheat processor could adduce any evidence which would entitle it to the benefits of Section 43 as interpreted by the Tenth Circuit Court. Undeniably the reimbursements paid by the Cannon Valley Milling Company to its vendees were of precisely the same

character as those paid by present petitioner, nor were the Cannon Mill's payments classifiable as "interest, or rental, or other items of that kind covering a period of years". Therefore the conflict between the two decisions cannot be resolved upon a factual basis.

(3) Again, in discussing the Cannon Mill tax returns (after having already determined the point at issue, and under the cumulative introduction, "The distortion of income and resulting injustice is *further* emphasized by *other* evidence"—129 F. (2d) at 646; italics added), the Eighth Circuit Court did not consider or discuss the 1938 return. The chart relied upon by the court (129 F. (2d) at 647) contains only figures for 1935, 1936, and 1937. The reason for including the year 1936 was that the Cannon Mill made its returns upon a fiscal year basis—not according to the calendar year as in the case at bar—and its 1936 fiscal year commenced July 1, 1935 (129 F. (2d) at 647). As a matter of fact, the aforesaid chart indicates that 1936 returns were actually not in evidence even in that case (note the absence from said chart of any figure for 1936 under the heading "Reported on return"—129 F. (2d) at 647).

In addition, although, of course, the figures vary somewhat, the evidence discloses distortion by application of the Commissioner's method of tax computation in the case at bar as clearly as in the *Cannon* case. According to the aforementioned chart, the Cannon Mill's total "income" for 1935 was $50,464.03, yet if subsequent reimbursements are charged against that income, its actual net profit was $21,040.58—a difference of $29,432.45. In the case at bar, petitioner's 1935 income without giving credit to subsequent reimbursements was $114,050.23 (R. 30). If such reimbursements are charged against that income, petitioner's actual 1935 profit is $68,184.33—a difference of $45,865.90 (R. 36, 38-39).

(4) Finally, the only taxable year in controversy is the calendar year 1935. If the record shows that in order clearly to reflect 1935 income it is necessary to relate 1936-1937-1938 vendee reimbursements back to that year, the requisite foundation for application of Section 43 has been laid. Certainly the record is complete in so far as figures for 1935 are concerned, showing "apparent" net income of $114,050.23 (R. 30), reimbursements therefrom totaling $45,865.90 (R. 36, 38-39), and, hence, actual net profits for 1935 of only $68,184.33. We submit that evidence relating to calendar years subsequent to 1935 is immaterial here where the sole controversy concerns a deficiency assessment for the year 1935.

It is submitted that the issues presented by the case at bar are of considerably more than local importance, and that the welfare of the entire milling industry and, for that matter, of the fiscus itself and of taxpayers in general, solicits a guiding construction by this Court of Section 43. It is further submitted that the conflict existing between the decisions of the Eighth and Tenth Circuit Courts of Appeal should be resolved by this Court so that all mills throughout the country may be afforded uniform tax treatment.

Wherefore it is respectfully submitted that this petition for issuance of writ of certiorari be granted.

THE SECURITY FLOUR MILLS,
Petitioner.

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SUPREME COURT OF THE UNITED STATES

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No. 276

THE SECURITY FLOUR MILLS COMPANY,
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vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

A.

Opinions Below.

The opinion of the Board of Tax Appeals, written by Member Mellott (Members Sternhagen, Van Fossan, Murdock, and Tyson dissenting without opinion, and Member Arnold writing a dissenting opinion), was rendered November 12, 1941 (R. 33). It is reported in 45 B. T. A. 671 (1941), and appears on pages 33 through 50 of the Record. Formal decision was entered on the opinion December 29, 1941, and appears at page 51 of the Record.

The opinion of the Tenth Circuit Court of Appeals was rendered March 6, 1943 (R. 64). It was written by Mr. Justice Bratton, concurred in by Mr. Justice Huxman. Mr.

Justice Phillips filed a dissenting opinion. The opinion is reported in 135 F. (2d) 165 (1943), and appears at pages 64 through 74 of the record. Judgment was entered thereon March 6, 1943, shown at page 75 of the record.

B.

Jurisdiction.

(1) Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended (Feb. 13, 1925, c. 229, § 1, 43 Stat. 938; Jan. 31, 1928, c. 14, § 1, 45 Stat. 54; June 7, 1934, c. 426, 48 Stat. 926), 28 U. S. C. A. § 347.

(2) Judgment of the Circuit Court of Appeals was entered March 6, 1943 (R. 64, 75). Petition for rehearing was denied May 22, 1943 (R. 84). Petition for writ of certiorari was filed August 21, 1943.

C.

Additional Statement.

Under heading "C" of the petition, pages 3 to 5, *supra*, a summary of the instant facts is given. We wish, here, merely to emphasize that the $45,865.90 reimbursements paid by petitioner to its vendees were in fact refunds of portions of the gross income received by petitioner in 1935 (R. 35, syl. 1 of B. T. A. opinion; R. 34, 39, 40, 45).

D.

ARGUMENT.

The court erred in resorting to committee reports in interpreting unambiguous Section 43 and, upon the basis thereof, in refusing to give effect to such statute and denying petitioner the right to deduct from 1935 income that portion thereof subsequently refunded to vendees.

During 1935 petitioner sold flour "tax on". Therefore petitioner's normal income from sales was enhanced to the

extent of the "tax payments" included in the price paid by petitioner's 1935 flour customers. The amount of this abnormal increment to sales income was approximately $100,000 (R. 40).

As of December 31, 1935, the close of the taxable year in question, this was offset by accrued liability for processing taxes. Very properly, then, in its 1935 tax returns it deducted from gross income the amount of the tax liability.

Thereafter, the tax was adjudged unconstitutional and the accrued tax liability was dissolved. Thereupon business necessity required that petitioner reimburse its vendees to the extent of processing taxes collected from them during 1935, as part of the sales price of flour, and not paid over to the fiscus.

The Commissioner subsequently disallowed the deduction for processing taxes accrued in 1935, thereby reopening, in effect, the 1935 calendar year. He refused, however, to reopen that tax year for all purposes, and denied petitioner the right to substitute, in lieu of the deduction for accrued processing taxes never paid, a deduction for that portion of 1935 income never retained by petitioner but refunded to its vendees. It will be observed that both the adjudication of the taxing statute's unconstitutionality and the customer reimbursements occurred after the close of the 1935 calendar year.

It will also be observed that the $45,865.90 repaid by petitioners to its vendees in 1936, 1937, and 1938—but principally ($41,879.50) in 1937—bore absolutely no relation to the cost of earning income in the latter three years. On the other hand, these reimbursements had a direct relation to 1935 income. They represent refunds to vendees of amounts paid by them, for processing taxes, to petitioner in 1935, and necessarily constitute a pro tanto reduction of 1935 income. The amount of money obtained from vendees in 1935 because of the then effective processing tax, and

later refunded ($45,865.90), is approximately two-thirds of petitioner's total net income for 1935 ($68,184.33). Therefore, to deny petitioner the right to the claimed deduction distorts the true picture of petitioner's 1935 net income. It can hardly be denied that a method of tax accounting which lists petitioner's net income for 1935 as $114,050.23 (R. 30) fails clearly to reflect actual income by exactly $45,865.90.

It was, we submit, to relieve against just such a situation that Section 43 of the 1934 Revenue Act was enacted.

The only two decisions interpreting Section 43 are the instant one by the Tenth Circuit Court and the contrary opinion of the Eighth Circuit Court in *Helvering* v. *Cannon Valley Milling Co., supra,* 129 F. (2d) 642.

The statute itself is, we submit, unambiguous, and clearly supports the construction given it by the Eighth Circuit Court in the Cannon case and by the dissenting opinion of Mr. Justice Phillips in the case at bar. It provides that "deductions" shall be taken in the year paid, incurred, or accrued:

> "* * * unless in order to clearly reflect the income the deductions and credits should be taken as of a different period."

The sole test laid down by the statute is whether the taking of deductions in the year of payment or accrual *clearly reflects income.* There is no suggestion that only certain *types* of deductions or credits may be granted Section 43's benefits. The statutory question is not the type of deduction or credit, but, instead, is whether that deduction or credit, *whatever its type,* should be taken as of a period different from that of payment or accrual *in order clearly to reflect income.*

That being true, and the statute being unambiguous, no justification for "interpretation" by resort to legislative

history exists. Extraneous evidence may not be relied upon to interpret or restrict an unequivocal statute (*Helvering* v. *City Bank Farmers Trust Co.*, 296 U. S. 85, 89, 80 L. Ed. 62, 66, 1935).

Furthermore, the Tenth Circuit Court's interpretation of Section 43 is not supported by the committee report upon which it is purportedly based. That report (R. 67) states the occasion for the enactment of Section 43 (actually section 200 (d) of the 1924 act)—to extend to deductions and credits the rights previously (1921 Act) granted only to "losses". It also gives illustrative cases wherein proposed Section 43 might be applied. But nowhere is there any suggestion that the Committee intended or desired Section 43, if enacted, should be *restricted* to the examples outlined. In fact, we submit the Committee's own language demonstrates conclusively that no restriction as to type of deduction was intended:

> "The Revenue Act of 1921 * * * authorizes the Commissioner to allow the deduction of losses [note that no special *types* of losses are specified] in a year other than that in which sustained when, in his opinion, it is necessary to clearly reflect the income. *The proposed bill extends that theory to ALL deductions and credits.*" (Italics and capitalization supplied.)

It is submitted that the Tenth Circuit Court of Appeals erred in its interpretation of Section 43, upon the basis of which erroneous interpretation all flour mills in the states embraced in that circuit are denied the rights accorded them by the statute, which rights are judicially guaranteed their brother mills doing business within the geographical confines of the Eighth Circuit Court's jurisdiction.

E.

Conclusion.

Section 43, although on the statute books since 1924,

has never been interpreted by this Court. In fact, prior to 1942 it had not been construed by any court.

There now exist two circuit court decisions, and two only, construing the statute. Those two decisions are in irreconcilable conflict. The decision of the Eighth Circuit Court, rendered July 15, 1942, is no longer open to review by certiorari or otherwise.

The vast majority of flour mills in the United States, to mention only one class of taxpayer concerned, are vitally interested in obtaining from this Court definitive interpretation of Section 43, those mills being presently confronted with a tax problem which hinges upon that statute. Only if this Court reviews the judgment of the Tenth Circuit Court in the instant case can uniform treatment of the country's countless mills be assured. In addition, Section 43 forms an important cog in the Revenue laws, and unless the errors in the Tenth Circuit Court's decision be corrected by this Court, the effect will be to create regrettable confusion regarding myriad general tax problems.

Inasmuch as the issue here involved is of the utmost importance, and inasmuch as the only judicial precedent thereon are two diametrically opposed decisions of the Tenth and Eighth Circuit Courts of Appeal, it is submitted that a writ of certiorari be issued.

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